[REVISIONAL CRIMINAL JURISDICTION]

CUSSEN, J.

July 14, 1940.

RAMAYAH vs. PUBLIC PROSECUTOR.

[SELANGOR CRIMINAL MISCELLANEOUS APPLICATION No. 19 of 1940]

Criminal Procedure Code (Cap. 6), sections 296 and 297—Police supervision—Change of residence.

The accused, being under police supervision and resident in the Kuala Langat district, went to Dengkil in Kajang district in search of employment. Dengkil is situate just outside the Kuala Langat district boundary, about seven or eight miles from the Telok Datoh Police Station in Kuala Langat, at which the accused had reported. The accused was charged and convicted on these facts with "leaving the district of Kuala Langat for Kajang without notifying the Officer in Charge of the Police District, Kuala Langat—an offence under section 297 (b), (Cap. 6)."

Held, that the offence to which section 297, by reference to section 296 (i) (c) of the Criminal Procedure Code, relates was that of "changing residence", not "leaving the district". The charge was wrongly framed and there was no evidence of change of residence.

Applicant in person.

A. J. Grattan-Bellew, Deputy Public Prosecutor, for respondent.

Cussen, J.—This is a petition for revision by one Ramayah. He was convicted on the 27th May, 1940, in the Court of the Magistrate, Telok Datoh, under section 297 (b) of the Criminal Procedure Code, for failing to comply with the requisitions of an order for police supervision, and he was sentenced to two months' rigorous imprisonment.

The charge preferred against him reads as follows:

> "That you on 29th March 1940, at Kuala Langat being a person subject to police supervision did fail to comply with the requisitions of the said supervision by leaving the district of Kuala Langat for Kajang without notifying the Officer in Charge of the Police District, Kuala Langat—an offence under section 297 (b) (Cap. 6)."

Section 297 *(b)* of the Criminal Procedure Code (Cap. 6), reads:

> "If any person subject to the supervision of the police who is at large within the Federated Malay States—
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> (b) fails to comply with the requisitions of the last preceding section on the occasion of any change of residence;
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> he shall in every such case unless he proves to the satisfaction of the Court before which he is tried that he did his best to act in conformity with the law be liable to imprisonment for one year."

The relevant requisition of the last preceding section, section 296, is section 296 (i) *(c)* which reads as follows:

> "Every person subject to the supervision of the police who is at large within the Federated Malay States shall—
>
> (c) whenever he changes his residence from one police district to another notify such change of residence to the officer in charge of the police district which he is leaving and to the officer in charge of the police district into which he goes to reside."

Now, the first matter to be observed is that the charge is wrongly drawn. The offence which the law constitutes is not merely leaving the district of Kuala Langat for Kajang, but changing his residence from the police district of Kuala Langat to the police district of Kajang without notifying the officer in charge of the police district of Kuala Langat. It is the change of *residence* which constitutes the offence. It is not an offence, as I read these provisions of the law, for a police supervisee, who has his place of residence in the district of Kuala Langat, to go into another district, unless it is shown that he is thereby changing his place of residence from one district to the other. There must be evidence to establish that, and the minimum fact which appears to me must be proved is a stay of at least one night at some place within the second district. I do not say—I refrain from saying—that that alone is sufficient to establish the offence, but certainly nothing less than that could do so.

In the present case, this man Ramayah came from the district of Port Dickson in Negri Sembilan on the 22nd March to the Kuala Langat district and reported himself at the Police Station, Telok Datoh, as a police supervisee. He told the police that he intended to stay and endeavour to find work in Banting in Kuala Langat district. What Ramayah said himself in his evidence was this:

> "I reported to the corporal that I was going in search of work and when I secured one I would let him know the place definitely. I therefore left this place for Dengkil....I was arrested in Dengkil the very day I arrived there."

Now, this place Dengkil is just across the district boundary between Kuala Langat and Kajang district and distant from Telok Datoh Police Station about seven or eight miles.

It seems to me clear that there is nothing in the fact of the accused being found in the adjoining district not far from the district boundary and a matter of a few miles from the Police Station at which he reported in Kuala Langat, namely, Telok Datoh.

There is nothing in that evidence to warrant the conclusion that the accused had changed his residence from the district of Kuala Langat to the district of Kajang. That being so, the offence has not been proved by the evidence.

I therefore set aside the conviction and sentence.

This accused has served one month of the sentence of two months, and I direct also that that period served should count as part of the term of the order for police supervision.

Conviction quashed.

[REVISIONAL CRIMINAL JURISDICTION]

HORNE, J.

June 14, 1940.

HEW KEN YEW vs. PUBLIC PROSECUTOR.

[SEREMBAN CRIMINAL SUMMONS CASE No. 38 of 1940]

Public Service Vehicles—(Conditions of Fitness, etc.) Rules, 1937, rule 62—(Conduct of Drivers, etc.) Rules 1937, rules 10 and 12—Dangerous substance introduced by passenger—Explosion—Responsibility of conductor.

The accused, a bus conductor, was convicted under rule 62 of the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Rules, 1937. It appeared that a passenger had brought on to the 'bus a metal cylinder containing sulphur dioxide, which had exploded. Rule 10 of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Rules prohibits passengers from travelling with dangerous or offensive articles while rule 12 of the same rules authorises the conductor to remove a passenger "contravening these rules." The conviction was based on the finding, applying the foregoing rules 10 and 12, that the appearance of the cylinder should have caused the conductor to enquire as to its contents.

On reference by the Public Prosecutor, Federated Malay States, to the Court of a Judge:

Held, that the (Conduct of Drivers, etc.) Rules are not to be read with the (Conditions of Fitness, etc.) Rules, and rule 12 of the former is referable only to that particular set of rules.

Held further, that rule 62 of the (Conditions of Fitness, etc.) Rules should be restricted to use of a vehicle in the sense of its operation and to substances necessary for its operation.

Horne, J.—The appellant was convicted and fined $50 on the offence set out in the charge, viz.:

> "That you at about 4.10 p.m. on 7th March, 1940, at 12½ mile Mantin, being the conductor of public service vehicle bearing registration No. SL. 3561, did permit a dangerous substance to wit, a cylinder of sulphur dioxide to be carried on the said vehicle, and did thereby commit an offence under rule 62 of P.S.V. (Conditions of Fitness, Equipment and Use) Rules, 1937."

He was the conductor of a bus coming from Kuala Lumpur to Seremban. At Beranang an explosion took place in the passenger accommodation and many passengers suffered sore eyes owing to contact with sulphur dioxide gas. It appears that one of the passengers brought on board a metal cylinder (probably steel) containing sulphur dioxide which is used in certain refrigerators. This passenger stated that he had the cylinder under his seat, also that it had been in use for three years, and he had 10 years' experience without having an explosion. The cause of the explosion or escape of gas is not established.

The conviction is based on the finding that the appearance of the cylinder should have caused the conductor to enquire as to the contents of the cylinder, that he failed to do so and he permitted the article to be carried. The Magistrate also brings in aid rule 12 of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Rules. There is nothing in the latter rules to say that they shall be read with the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Rules. And the conductor's power under rule 12 of the former, viz., to remove a passenger "contravening those rules" is referable only to that particular set of rules. One of them rule 10 (ii) prohibits passengers travelling with firearms or dangerous or offensive articles, but to apply rule 12 the conductor must have actual knowledge of the contravention. Hence I suppose the attempt to charge him under rule 62 of the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Rules.

The real difficulty in this case is to know what things are forbidden by rule 62 of the Public Service Vehicles (Conditions of Fitness, Equipment and Use) Rules. By rule 10 (ii) of the Public Service Vehicles (Conduct of Drivers, Conductors and Passengers) Rules a passenger shall not travel with any dangerous article. By rule 62—

> "Except for the fuel and lubricant necessary for the use of the vehicle no explosive highly inflammable or otherwise dangerous substance shall be carried on a vehicle unless it is so packed that even in the case of an accident to the vehicle it is unlikely to cause damage or injury to the vehicle or passengers carried therein."

This rule is found in a set of rules relating to the "use of the vehicle". In a sense passengers use the vehicle, though I think the more apt expression is that they travel in or on it. As there is a rule governing the conduct of passengers in relation to dangerous articles, this rule can and should be restricted to use of